

CALIFORNIA CODE OF REGULATIONS

TITLE 22. SOCIAL SECURITY

**DIVISION 4.5. ENVIRONMENTAL HEALTH STANDARDS FOR THE
MANAGEMENT OF HAZARDOUS WASTE**

PROPOSED REGULATIONS

CORRECTIVE ACTION

Amend CCR Title 22 section 66260.10 to read:

66260.10. Definitions.

Ahazardous waste facility,≡ Ahazardous waste management facility,≡ AHW facility,≡ or Afacility≡ means:

(a) all contiguous land and structures, other appurtenances, and improvements on the land used for the treatment, transfer, storage, resource recovery, disposal or recycling of hazardous waste. A hazardous waste facility may consist of one or more treatment, transfer, storage, resource recovery, disposal or recycling operational units or combinations of these units.

(b) ~~For the purpose of implementing corrective action under articles 6, 15.5, or 17 of chapter 14 or article 18 of chapter 15 of this division, all contiguous property under the control of the owner or operator seeking a permit under Title 22, Division 4.5 of the California Code of Regulations. This definition applies to all contiguous property of a owner or operator implementing corrective action at a facility under Health and Safety Code section 25200.10 or 25187, or federal RCRA section 3008(h) [U.S.C. Title 42, Section 6928(h)]. This definition also applies to all contiguous property of a owner or operator implementing removal or remedial action at an extra-large, large, medium, or small site where hazardous substances have been released or threaten to be released under Health and Safety Code sections 25187 or 25358.9 where as provided for under the provisions of that section the Department has excluded the removal or remedial action at a site from the hazardous waste facilities permit required by Health and Safety Code section 25201.~~ hazardous waste facility includes all contiguous property under the control of the owner or operator required to implement corrective action.

NOTE: Authority cited: Sections 25141, 25150, 25159.1, 25158.4, 25159, 25159.5, 25179.6, 25187.7, 25200.10, 25204, 25218.3(d), 25316, 25355.5, 25356.9, 25358.3, 25358.9, 58004 and 58012 Health and Safety Code; and Section 58012, Governor=s Reorganizational Plan #1 of 1991. Reference: Sections 25110.02, 25110.1, 25110.5, 25111, 25112, 25112.5, 25113, 25114, 25115, 25117, 25117.1, 25117.3, 25117.8, 25117.9, 25117.11, 25118, 25119, 25120, 25121, 25121.5, 25122.7, 25123, 25123.3, 25123.5, 25123.6, 25141, 25150, 25158.2, 25159, 25159.5, 25187.7, 25200.10, 25201.6, 25204, 25218.1(f), 25218.3, 25229, 25316, 25354(b), 25355.5, 25535.6, 25356.9, 25358.1, 25358.9, 25359.8, 25361, 25501, 25529, 58004 and 58012, Health and Safety Code; and 40 CFR Sections 260.10, 261.1, 264.552, 264.1031, 268.2 and 270.2.

Amend CCR Title 22, chapter 14, article 6, section 66264.101 to read:

Chapter 14. Standards for Owners and Operators of Hazardous Waste Transfer, Treatment, Storage, and Disposal Facilities

Article 6. Water Quality Monitoring and Response Programs for Permitted Facilities

66264.101. Corrective Action for Waste Management Units.

(a) The owner or operator of a facility seeking a permit for the transfer, treatment, storage or disposal of hazardous waste shall institute corrective action pursuant to chapter 50 of this division as necessary to protect human health and the environment for all releases of hazardous waste or constituents from any solid or hazardous waste management unit at the facility, regardless of the time at which waste was placed in the unit.

(b) Corrective action will be specified in the permit or order in accordance with this article, ~~article 15.5, or article 17 or chapter 50 of this division,~~ and Health and Safety Code sections 25200.10, 25187, or 25200.14, ~~or section 25358.9 where as provided for under the provisions of that section the Department has excluded the removal or remedial action at a site from the hazardous waste facilities permit required by Health and Safety Code section 25201.~~ The permit or order will contain schedules of compliance for such corrective action (where such corrective action cannot be completed prior to issuance of the permit) and assurances of financial responsibility, when required, for completing such corrective action.

~~(c) — The owner or operator shall implement corrective actions beyond the facility boundary, where necessary to protect human health or the environment, unless the owner or operator demonstrates to the satisfaction of the Department, that despite the owner or operator's best efforts, the owner or operator was unable to obtain the necessary permission to undertake such actions. The owner or operator is not relieved of all responsibility to cleanup a release that has migrated beyond the facility boundary where off-site access is denied. On-site measures to address such a release will be determined on a case-by-case basis. Assurance of financial responsibility for such corrective action shall be provided.~~

NOTE: Authority cited: Sections 208, 25150, 25159, 25187, 25200.10, 25355.5, 25256.9, 25358.3, 25358.9, 58004 and 58012, Health and Safety Code. Reference: Sections 25150, 25159.5, 25187, 25200, 25200.10, 25355.5, 25356.9, 25358.3 and 25358.9, Health and Safety Code; 40 CFR Section 264.101.

Amend CCR Title 22, chapter 14, article 17, section 66265.1 to read:

Chapter 15. Interim Status Standards for Owners and Operators of Hazardous Waste Transfer, Treatment, Storage, and Disposal Facilities

Article 1. General

66265.1 Purpose, Scope, and Applicability

- (a) The purpose of this chapter is to establish minimum standards that define the acceptable management of hazardous waste during the period of interim status and until certification of final closure or, if the facility is subject to post-closure requirements, until post-closure responsibilities are fulfilled.
- (b) The standards of this chapter, and of ~~article 15.5 of chapter 14~~ chapter 50 of this division, apply to owners and operators of facilities that transfer, treat, store or dispose of hazardous waste who have fully complied with the requirements for interim status under Health and Safety Code section 25200.5 and section 66270.10 of this division until either a permit is issued under Health and Safety Code section 25200 or until applicable closure and post-closure responsibilities specified in this chapter are fulfilled, and those owners and operators of facilities in existence on November 19, 1980, who have failed to provide timely notification as required by 42 U.S.C. section 6930(a) and/or failed to file Part A of the permit application as required by section 66270.10(e) and (g). These standards apply to all transfer, treatment, storage and disposal of hazardous waste at these facilities, except as specifically provided otherwise in this chapter or chapters 11, 12 or 13 of this division.

NOTE: Authority cited: Sections 58012 of the Governor=s Reorganizational Plan #1 of 1991, 25150 and 25159, Health and Safety Code. Reference: Sections 25200.5, 25141, 25159, 25159.5, and 25159.5 Health and Safety Code; 40 CFR 265.1.

Add CCR Title 22, chapter 15, article 6, section 66265.101 to read:

Article 6. Water Quality Monitoring and Response Programs for Interim Status Facilities

66265.101. Corrective Action for Interim Status Waste Management Units.

(a) The owner or operator of a facility seeking a permit for the transfer, treatment, storage or disposal of hazardous waste shall institute corrective action pursuant to chapter 50 of this division as necessary to protect human health and the environment for all releases of hazardous waste or constituents from any solid or hazardous waste management unit at the facility, regardless of the time at which waste was placed in the unit.

(b) Corrective action will be specified in the permit or order in accordance with chapter 50 of this division, and Health and Safety Code sections 25200.10, 25187, or 25200.14. The permit or order will contain schedules of compliance for such corrective action (where such corrective action cannot be completed prior to issuance of the permit) and assurances of financial responsibility, when required, for completing such corrective action.

NOTE: Authority cited: Sections 208, 25150 and 58012, Health and Safety Code. Reference: Sections 25187, 25200.10, 25200.14, 58009 and 58010 Health and Safety Code.

Adopt new CCR Title 22 Chapter 50, Article 1, section 67500.1 to read:

Chapter 50. Corrective Action.

Article 1. General Provisions.

67500.1. Applicability.

(a) The provisions of this chapter establish requirements for corrective action that are applicable whenever a responsible party is required by an administering agency to take corrective action, or takes corrective action subject to the oversight of the administering agency, in response to the release of a hazardous waste, hazardous constituent or hazardous substance.

(1) Regulated units as defined in sections 66264.90, 66264.700, 66265.90, and 66265.710 shall be subject to the corrective action requirements applicable to those units that are set forth in articles 6 and 17 of chapter 14 of this division and articles 6 and 18 of chapter 15 of this division.

(b) The administering agency shall take or require any action necessary to ensure that corrective action is performed in a manner that is consistent with the National Contingency Plan, as revised and republished pursuant to 42 U.S.C. 9605 (40 C.F.R. section 300.1 et seq.) in the following circumstances:

(1) At the request of a responsible party; or

(2) Whenever the administering agency determines that consistency with the National Contingency Plan is necessary or appropriate to recover funds that are or may be expended in response to a release from any responsible party.

(c) The provisions of this chapter do not apply in the following circumstances:

(1) The provisions of this chapter, including but not limited to the application requirements in section 67500.5, do not apply to actions taken to address the release of a hazardous waste, hazardous constituent or hazardous substance if such material will be permanently removed from the site for offsite treatment and/or disposal, leaving no residual concentrations exceeding background concentrations in the saturated and unsaturated zones, as verified with representative sampling, if a determination has been made or an assessment has been performed to ensure there is no actual or potential groundwater contamination and if the amount of such material managed does not exceed 60 cubic yards.

(A) If such actions are subject to the oversight and approval of an administering agency, an opportunity for public review and comment shall be provided if the administering agency determines the level of community interest is significant after considering issues and concerns expressed by the community and the administering agency shall maintain an administrative record to support its decision.

(2) The provisions of this chapter, with the exception of section 67500.5, do not apply at sites for which the results of the site assessment performed in accordance with section 67500.10 indicate no potential release of hazardous waste, hazardous constituents or hazardous substance.

(d) The provisions of this chapter are prospective and do not apply to sites for which a final remedy has been approved by the Department prior to the effective date of the chapter.

(e) The provisions of this chapter are prospective, and shall not apply to sites, or to portions of sites, for which the Department has, prior to the effective date of this chapter, issued an order or brought a judicial action, or entered into an agreement, requiring a responsible party to take corrective action, unless the administering agency and responsible party mutually agree otherwise.

NOTE: Authority cited: Sections 25150 and 58012, Health and Safety Code. Reference: Sections 25173.6, 25187, 25200.10, 25200.14, 58009 and 58010 of the Health and Safety Code.

Adopt new CCR Title 22 section 67500.2 to read:

67500.2. General Provisions.

- (a) The nature, extent and scope of corrective action taken or required by this chapter shall be based upon the conditions at the site, the current and reasonably anticipated future land uses of the site and impacts and threatened impacts to waters of the state.
- (b) The responsible party shall implement corrective action beyond property boundaries, as necessary to address the areal extent of contamination caused by the release.
- (c) The administering agency shall designate a project manager or contact person to assist the responsible party and facilitate the corrective action process. The responsible party shall also designate a project manager or contact person to work directly with the administering agency.
- (d) The administering agency and responsible party shall make best efforts to schedule a scoping meeting to discuss the implementation of requirements for corrective action. If possible, the scoping meeting should be held at least 30 days before the first major deliverable, such as an investigation workplan, is due for submittal to the administering agency. The nature and extent of the scoping meeting shall vary depending upon the site conditions and is not required if both the administering agency and the responsible party agree.
- (e) The responsible party shall ensure that all engineering and geological interpretations, conclusions and recommendations are developed in conformance with applicable state law, including, but not limited to, sections 6735 and 7835 of the Business and Professions Code. The responsible party shall ensure that all toxicological interpretations, conclusions and recommendations are conducted by a professional with certification as a Diplomate of the American Board of Toxicology. Possession of a Master=s Degree in Toxicology, Biochemistry, Pharmacology or a closely related specialty from an accredited college or university and three years of experience following the receipt of the Master=s Degree in designing and managing toxicological studies, interpreting results, and conducting hazard and safety evaluations; or possession of a Doctoral Degree in Toxicology, Biochemistry or Pharmacology, or a closely related specialty, may be substituted for the certification.
- (f) The director, in consultation with the Secretary for Environmental Protection, shall conduct a review within five years of the effective date of the regulations in this chapter to determine whether any of the regulations in this chapter should be amended or repealed.

NOTE: Authority cited: Sections 25150 and 58012, Health and Safety Code. Reference: Sections 25173.6, 25187, 25200.10, 25200.14, 58009 and 58010 of the Health and Safety Code.

Adopt new CCR Title 22 section 67500.3 to read:

67500.3. Definitions.

(a) For the purpose of this chapter, the following definitions apply:

(1) A administering agency means the Department of Toxic Substances Control, an agency determined to be qualified pursuant to section 67500.5, or an agency designated pursuant to section 25262 of the Health and Safety Code.

(2) Administrative record means a record maintained by the administering agency that consists of all documents the administering agency relied upon or considered when taking or requiring corrective action pursuant to this chapter or approving actions pursuant to section 67500.1(c), whether or not the document actually supports the corrective action taken or required. The administrative record shall include, but is not limited to, all documents made available for public review; information such as a site investigation report, remedy selection study or interim measures assessment; documentation for financial assurance or land use conditions; and any responses to comments.

(3) A background concentration means a constituent concentration due to a source other than a release at the site under consideration. Background concentrations can be either naturally occurring or anthropogenic. In instances when the background concentration cannot be distinguished from the concentrations of contaminants of concern at the site, the responsible party may choose to remediate to non-detectable concentrations instead of background concentrations.

(4) A corrective action means activities taken to investigate, characterize, evaluate, correct and enforce requirements applicable to address releases of a hazardous waste, hazardous constituent or hazardous substance, as necessary to protect public health and the environment.

(5) A hazardous waste means a solid waste, or combination of solid wastes, which because of its quantity, concentration or physical, chemical, or infectious characteristics may:

(A) cause, or significantly contribute to an increase in mortality or an increase in serious irreversible, or incapacitating reversible, illness; or

(B) pose a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported, or disposed of, or otherwise managed.

(6) A interim measures means measures performed to control, minimize, prevent, mitigate, or abate releases that pose actual or potential threat or endangerment to human health or the environment, to stabilize a site by stopping or minimizing off-site migration of contaminants and controlling the sources of contaminant releases, or to expedite remediation by accelerating implementation of selected elements of a remedy.

(7) A land use conditions means recorded instruments restricting the present and future land uses of a site, including, but not limited to, easements, covenants, restrictions, or servitudes, or any combination thereof, as appropriate. Land use conditions shall run with the land from the date of recordation, shall bind all owners of the land, and their heirs, successors, and assignees, and the agents, employees, and lessees of the owner, heirs, successors and assignees, and shall be enforceable by the administering agency pursuant to Article 8 (commencing with section 25180) of chapter 6.5 of the Health and Safety Code.

(8) A planned use means the reasonably anticipated future land uses based on all of the following factors:

1. The land use history of the site and surrounding properties, the current land uses of the site and surrounding properties and recent development patterns in the area where the site is located.

2. Land use designations at the site and surrounding properties, including current and reasonably anticipated future zoning and local land use plans and the presence, if any, of groundwater and surface water charge areas.

3. The potential for economic redevelopment.

4. Current plans for the site by a responsible party who is the owner or operator of the site.

5. Comments by the affected community regarding the use of the site.

(9) Apresumptive remedy means the preferred technology for common categories of constituents or forms of contaminated media specified in the document APresumptive Remedies: Policy and Procedures (dated September 1993 and incorporated by reference) and soil washing and chemical stabilization for metals in soil.

(10) Arelease means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping or disposing into the environment, including the abandonment or discarding of barrels, containers, and other closed receptacles containing hazardous waste, hazardous constituents or hazardous substances.

(11) Aremedial action plan means a document that describes the remedy and remedial objectives selected for a site. The remedial action plan may also specify requirements for treatment, storage or disposal of hazardous waste at the site and may be used in lieu of a permit for those activities.

(12) Aremediation means activities taken to implement a remedy at a site.

(13) Aresponsible party means present and prior owner, lessees, or operators of the property where hazardous waste, hazardous constituents or hazardous substances are, have been or may be located; present or past generators, storers, transporters, disposers, and handlers of hazardous waste; persons who arrange, or have arranged, by contract or other agreement, to treat, transport, dispose of, or otherwise handle hazardous waste, hazardous constituents or hazardous substances; or other persons performing corrective action.

(14) Arisk assessment means a risk-based system of analysis used to characterize the current and potential threats to human health and the environment that may be posed by contaminants migrating to groundwater or surface water, releasing to air, leaching through soil, remaining in the soil and bioaccumulating in the food chain. Exposure assessments shall include the development of reasonable maximum estimates of exposure for both current land use and reasonably anticipated future land use conditions at a site.

(15) Asite means any site, area or facility, including, but not limited to, any building, structure, installation, equipment, pipe or pipeline, well, pit, pond, lagoon, impoundment, ditch, landfill, storage container, motor vehicle, rolling stock or aircraft, where hazardous waste, hazardous constituents or a hazardous substance has been treated, stored, transferred, disposed of, deposited, placed, released, or has otherwise come to be located.

(16) Asite assessment means an assessment to collect information on releases and identify releases or potential releases needing further investigation. The information collected by the site assessment includes, but is not limited to information about the source characteristics, constituent characteristics, pollutant migration pathways, evidence of release and exposure potential.

NOTE: Authority cited: Sections 25150 and 58012, Health and Safety Code. Reference: Sections 25173.6, 25187, 25200.10, 25200.14, 58009 and 58010 of the Health and Safety Code.

Adopt new CCR Title 22 section 67500.4 to read:

67500.4. Public Participation.

(a) The responsible party shall conduct public participation activities appropriate to the level of community interest and the nature and extent of the corrective action that may be required at the site. The responsible party shall work cooperatively with the administering agency to ensure that the affected and interested public and community are involved in the decision-making process. Any such public participation activities shall be conducted in accordance with guidance provided by the Department; and with the review and approval of the administering agency.

(b) The public participation process for corrective action shall include, at a minimum, a community profile, a mailing list and a public notice and comment period for a proposed interim measure, proposed remedial action plan, and no further action determinations as specified in section 67500.30(d). An agency determined to be qualified pursuant to section 67500.5 may use a different public participation process for corrective action if it meets the minimum requirements specified in this subsection.

(1) A community profile shall be prepared for every site by the responsible party, in accordance with the Department's Public Policy and Procedures Manual No. OPP-94-022, and submitted to the administering agency. Except as provided in section 67500.25(f)(3), a community profile shall be submitted to the administering agency during or prior to the site investigation or interim measures assessment. Based on the community profile, the administering agency shall determine the need for further community assessment, which may include community interviews and/or a public participation plan.

(2) A mailing list shall be developed for every site by the responsible party in accordance with guidance provided by the Department. The mailing list shall be updated and submitted to the administering agency on a periodic basis. A mailing list shall include, but is not limited to, persons who request to be included on the list, property owners adjacent to the site, participants in past permit proceedings in the site's area, and other interested parties. Except as provided in section 67500.25(f)(3), a mailing list shall be updated and submitted to the administering agency prior to the mailing of notices required by subsection (b)(3) of this section.

(3) Except as provided in subsection (b)(3)(A) of this section and section 67500.25(f)(3), a public notice shall be published in a newspaper of general circulation by the administering agency or responsible party, if so determined by the administering agency. Notices shall also be mailed to individuals on the mailing list. Public notices shall announce the proposed decision, specify a public comment period, and include the date and location of a public hearing or meeting, if one is to be held. If a fact sheet is prepared according to paragraph (c) of this section, the public notice may be incorporated into the fact sheet, provided all information in the public notice is placed on the front page of the fact sheet. Publishing the public notice in the fact sheet shall not exempt the administering agency from placing a public notice in a newspaper of general circulation.

(A) An agency determined to be qualified pursuant to section 67500.5 may use a form of public notice other than a newspaper notice if approved by the Department pursuant to section 67500.5.

(c) An administering agency may require that additional public participation activities be performed for a site depending upon the level of community interest and the nature and extent of

the corrective action that may be required at the site. Such additional activities may include, but are not limited to:

(1) The establishment of an information repository by the administering agency at a location reasonably accessible to the public near the site. The information repository shall contain at a minimum all documents made available for public review, and documents related to site activities and decisions.

(2) The preparation of a fact sheet by the responsible party in accordance with guidance provided by the Department. Fact sheets shall be submitted to the administering agency for review and approval. Following approval, the responsible party shall distribute fact sheets to all individuals on the mailing list. Fact sheets shall provide information about corrective action at the site in a manner understandable to the local community.

(3) Conduct of a public hearing or meeting by the administering agency if there is a significant degree of public interest in a proposed remedial action plan or interim measure; if such a hearing or meeting is needed to clarify issues; if the administering agency receives written notice of opposition to a proposed remedial action plan or interim measure; if the administering agency deems it necessary to conduct a hearing or meeting; or if the administering agency receives a request for a hearing or meeting during a public comment period. Public notice of a hearing or meeting shall be provided in accordance with subparagraph (b)(3) of this section. A public hearing shall be held if required by section 66271.11. All comments and supporting information not contained in the administrative record must be submitted by the close of the comment period and the public comment period under this section shall automatically be extended to the close of any public hearing or meeting under this section.

NOTE: Authority cited: Sections 25150 and 58012, Health and Safety Code. Reference: Sections 25173.6, 25187, 25200.10, 25200.14, 58009 and 58010 of the Health and Safety Code.

Adopt new CCR Title 22 section 67500.5 to read:

67500.5. Determination of CUPA Qualification.

(a) Definitions.

(1) AAdministrative Enforcement Order≡ means an order issued pursuant to HSC, section 25187.

(2) AApplication≡ means a request submitted by a Certified Unified Program Agency to the Department for a determination of qualification to implement the environmental assessment and corrective action portions of the unified program pursuant to HSC section 25404.1.

(3) ACertified Unified Program Agency or CUPA≡ means the agency as defined in Title 27, California Code of Regulations, section 15110(a)(2), that has been certified by the Secretary to implement the Unified Program.

(4) ALocal Oversight Program≡ means the program in which local agencies oversee corrective actions at underground storage tank sites through a contract with the State Water Resources Control Board pursuant to HSC section 25297.1.

(5) ATechnical Staff≡ means staff assigned to oversee environmental assessments and corrective action.

(b) General Provisions.

(1) A qualified CUPA shall implement and enforce the environmental assessment and corrective action program as specified in section 67500.1 et seq.

(2) A qualified CUPA may not implement and enforce environmental assessment and corrective action at any hazardous waste management facility that is or was required to possess a RCRA permit or other RCRA authorization.

(3) At a hazardous waste facility that is, or was, required to possess a hazardous waste facility permit, standardized permit or interim status, a CUPA may implement and enforce corrective action only with regard to hazardous waste management units that are subject to requirements applicable to hazardous waste generators, and persons who are operating pursuant to a Permit By Rule or Conditional Authorization.

(A) Upon discovering a release at a hazardous waste facility that is, or was, required to possess a hazardous waste facility permit, standardized permit or interim status, a qualified CUPA shall notify and coordinate with the Department in order to determine the appropriate administrating agency to implement and enforce environmental assessment and corrective action requirements.

(4) A qualified CUPA shall comply with all applicable California Environmental Quality Act (CEQA) requirements that are applicable to its environmental assessments and corrective actions.

(5) The authority granted pursuant to this section does not limit a CUPA=s authority to take any enforcement action authorized by in accordance with local law, to the extent local law is not inconsistent with the provisions of this chapter.

(6) A qualified CUPA shall comply with all applicable state statutes and regulations, and local ordinances pertaining to environmental assessment and corrective action.

(c) Determination of Qualification.

- (1) A CUPA shall submit an application to the Department pursuant to this section.
- (2) The Department, upon completing the review of the application, will notify the CUPA in writing whether the CUPA has been determined to be qualified pursuant to this section.

(d) In order for the Department to determine if a CUPA is qualified to implement and enforce the requirements for environmental assessments and corrective action portions of the unified program under Health & Safety Code (HSC), section 25404.1(a)(3)(C), the CUPA shall demonstrate in its application that it meets the following criteria:

(1) Capacity to Administer the Issuance of Administrative Enforcement Orders. An applicant CUPA shall have the capacity to administer the issuance of administrative enforcement orders for corrective action which shall include, at a minimum, the following:

- (A) Procedures established for the issuance of administrative enforcement orders;
- (B) Adequate legal support (e.g., city attorney, county counsel, etc.); and
- (C) Documentation that managers, supervisors, and staff have received training in the administrative enforcement order process.

(2) Personnel Expertise Requirements.

(A) CUPA Personnel Expertise. CUPA personnel designated to oversee environmental assessments and corrective actions shall have educational and technical expertise as follows:

1. A degree from an accredited college or university approved by the Superintendent of Public Instruction under provisions of Education Code, section 94310, with a minimum of 30 semester units in environmental, biological, chemical, physical, or soil science; environmental or public health; environmental engineering; or a directly related scientific field; or

2. Two consecutive years of experience in hazardous materials management, regulation, analysis, or research, environmental research, monitoring, surveillance or enforcement, or resource recovery may be substituted for the degree if the personnel have a minimum of 30 semester units in the science subjects from an institution as required by subparagraph (2)(A)1.

3. A minimum three years experience acquired in overseeing corrective action, including investigation, site characterization, sampling and monitoring, risk assessment, statistical analysis, corrective measures and remedy selection, hydrological assessments, and the corrective action process; and

4. Experience overseeing corrective action work through administrative, civil or criminal procedures.

(B) Third Party Technical Expertise. A CUPA that does not have personnel with adequate technical expertise as specified in subparagraph (2)(A) to implement and enforce the environmental assessment and corrective action program within its jurisdiction, may meet the technical expertise qualifications if the CUPA has at least one technical staff who meets the criteria specified in subparagraph (2)(A) and who will oversee one of the following:

1. A third party who meets the minimum educational and technical qualifications in subparagraph (2)(A) who will oversee corrective action pursuant to an agreement with the CUPA; or

2. A local, state, or federal environmental enforcement agency with staff who meet the minimum requirements specified above in subparagraph (2)(A) who will oversee corrective action pursuant to an interagency agreement with the CUPA.

(C) Specialized Expertise. A CUPA shall demonstrate that it has access, as needed, to technical expertise for the review and approval of all engineering and geological interpretations, conclusions and recommendations that are conducted in conformance with applicable state law, including, but not limited to, sections 6735 and 7835 of the Business and Professions Code as required of the owner or operator, or generator or transporter, pursuant to subsection 67500.2(e). A CUPA shall demonstrate that it has access, as needed, to technical expertise to review all toxicological interpretations, conclusions and recommendations conducted by a professional with certification as a Diplomate of the American Board of Toxicology, as required of the owner or operator, or generator or transporter, pursuant to subsection 67500.2(e). A CUPA may satisfy these requirements by entering into an agreement with a third party or an interagency agreement with a local, state, or federal environmental agency with the required technical expertise.

(3) CUPA Past Experience.

(A) A CUPA shall have at least three years of corrective action experience. The experience must have been acquired in the three years prior to the date the application is submitted to the Department, and must be acquired by one of the following:

1. Participation in a Local Oversight Program.
2. Experience overseeing corrective action in conjunction with a state or federal environmental agency.

(B) Documentation of Past Experience. A CUPA shall submit with its application documentation demonstrating that it has three years of corrective action experience, as described in paragraph (3)(A) as follows:

1. The number of sites at which corrective action has been taken or overseen by a CUPA and a description of the action taken; and
2. The number of sites at which administrative, civil, and criminal actions have been initiated by the CUPA and a description of the action taken.

(4) Adequacy of Staff Resources.

(A) A CUPA shall submit with its application documentation demonstrating that it has the personnel resources needed to conduct the following activities:

1. File reviews;
2. Ongoing training of personnel;
3. Non-technical support for personnel; and
4. Management of daily operations.

(5) Recordkeeping and accounting systems.

(A) A CUPA shall submit with its application a description of its budget and accounting processes. Such processes shall include an accounting of expenditures made and revenues received for environmental assessment and corrective action activities and actions taken pursuant to section 67500.1(c)(1) at all unified program facilities.

(B) A CUPA shall submit with its application a description of tracking systems to be used for monitoring the progress of environmental assessment and corrective action activities and actions taken pursuant to section 67500.1(c)(1) at all unified program facilities.

(C) A CUPA shall submit with its application a description of how files will be maintained for environmental assessment and corrective action activities associated with each unified program facility within its jurisdiction. These files shall include, but not be limited to, all documents which comprise the administrative record as defined in section 67500.3(a)(2).

(D) A CUPA shall maintain a list of all unified program facilities that are either undergoing or that have completed any corrective action or actions taken pursuant to section

67500.1(c)(1) at all unified program facilities. This list shall be available for public inspection upon request.

(6) If a CUPA=s public participation activities are different from those required in section 67500.4, then the CUPA shall submit with its application its public participation activities for review and approval by the Department.

(7) Cost Recovery. In order to be determined qualified, a local ordinance shall be enacted that authorizes the CUPA to recover the costs of implementing and enforcing the environmental assessment and corrective action program within its jurisdiction. A CUPA may be determined to be qualified if it demonstrates to the Department that such an ordinance will be enacted within 60 days of the determination.

(8) Service charge. In order to be determined qualified the CUPA shall have collected and remitted the state surcharge to the Secretary in compliance with Health and Safety Code section 25404.4 and section 15250 of Title 27 of the California Code of Regulations.

(9) A CUPA may incorporate by reference in its application any information previously submitted to the Secretary in the application submitted pursuant to article 3, division 1, chapter 1, Title 27 of the California Code of Regulations.

(e) Withdrawal of Determination of Qualification.

(1) The Department may withdraw its determination of qualification if a CUPA fails to maintain compliance with this chapter.

(2) Adequacy of Budget Resources and Funding Mechanisms.

(A) Following a determination of qualification, if resources available to a CUPA changed such that the requirements of this section are no longer satisfied, the CUPA shall notify the Department within 15 days of the change. Following receipt of the notice or upon its own determination that the requirements of this section are not met, the Department shall:

1. Withdraw its determination of qualification; or

2. If the Department determines that adequate resources will be in place within six months of the date of notice or determination, then the CUPA may maintain its determination of qualification as long as the CUPA will at least meet the criteria specified in subparagraph (2)(A) or (B) during the six month period.

(f) Determination of Qualification Review. The CUPA=s implementation and enforcement of the environmental assessment and corrective action program shall be reviewed by the Department at least once every three years in conjunction with the California Environmental Protection Agency=s CUPA Evaluation Process pursuant to Title 27, section 15290.

NOTE: Authority cited: Section 25404.1(a), Health and Safety Code. Reference cited: Section 25404.1(a), Health and Safety Code.

Adopt new CCR Title 22 article 2, section 67500.10 to read:

Article 2. Corrective Action Approach.

67500.10. Site Assessment.

- (a) The administering agency shall, except as provided in paragraph (d) of this section, assess potential hazardous waste, hazardous constituent and hazardous substance releases from a site.
- (b) The administering agency shall prepare a site assessment report unless the administering agency determines that a Phase I Environmental Assessment, prepared in accordance with section 25200.14 of the Health and Safety Code, or other applicable documents are an adequate and complete substitute for a site assessment report.
- (c) Notwithstanding paragraph (b) of this section, if the administering agency grants approval, the responsible party may perform a site assessment in lieu of the administering agency performing the site assessment. The responsible party shall perform such a site assessment in accordance with guidance provided by the Department. The site assessment report prepared by the responsible party shall be revised in accordance with written comments, if any, from the administering agency and is subject to administering agency approval before becoming final.
- (d) If an agency determined to be qualified pursuant to section 67500.5 encounters a responsible party unwilling to allow the agency to perform a site assessment, the agency may refer the site to the Department.

NOTE: Authority cited: Sections 25150 and 58012, Health and Safety Code. Reference: Sections 25173.6, 25187, 25200.10, 25200.14, 58009 and 58010 of the Health and Safety Code.

Adopt new CCR Title 22 sections 67500.11 to read:

67500.11. Site Investigation.

(a) (1) The responsible party shall perform an investigation of a site whenever there has been a release or potential release of hazardous waste, hazardous constituents or hazardous substances to the extent necessary to protect human health and the environment and to identify and implement appropriate corrective action.

(2) The administering agency may require the responsible party to submit workplans, reports or other information determined necessary to ensure that the site investigation will be adequate to accomplish the objectives stated in paragraph (b) of this section. Further data may be collected during the remediation phase.

(b) The site investigation shall be sufficient, as determined by the administering agency, to accomplish the following, as needed:

(1) characterize the nature, extent, and potential for migration of the release of hazardous waste, hazardous constituents or hazardous substance, including migration of waste to waters of the state at concentrations that exceed applicable water quality objectives in applicable water quality control plans;

(2) support the selection and use of necessary interim measures;

(3) support the use of screening levels as remedial objectives;

(4) support the preparation of a risk assessment and analysis, including a determination of actual and potential exposure pathways; and

(5) support the evaluation, selection, implementation and monitoring of a final remedy, including the evaluation of remedy alternatives, if required.

(c) The responsible party shall document the findings of the site investigation and any information used to make decisions regarding the site. This information shall be made available upon request by the administering agency. The responsible party may also be required to provide one of the following documents:

(1) If determined necessary by the nature and extent of the contamination and site investigation, the responsible party may be required to prepare and submit to the administering agency for approval a site investigation report that summarizes the findings of the site investigation;

(2) If there is a phased site investigation, separate site investigation reports and/or a report that summarizes the findings of all phases of the site investigation may be required by the administering agency.

(3) If determined appropriate by the administering agency, given the nature and extent of the contamination and site investigation, the responsible party may incorporate the findings of the site investigation into the RAP, prepared pursuant to section 67500.20, in lieu of submitting a site investigation report as a separate document.

NOTE: Authority cited: Sections 25150 and 58012, Health and Safety Code. Reference: Sections 25173.6, 25187, 25200.10, 25200.14, 58009 and 58010 of the Health and Safety Code.

Adopt new CCR Title 22 section 67500.12 to read:

67500.12. Screening Procedures and Presumptive Remedies.

(a) Multi-chemical, multi-media and risk-based screening levels for media-specific chemical concentrations of contaminants in soil may be used at any stage of the corrective action process to assess the need for further action at a site in accordance with paragraph (b) of this section. If further action is needed, remedial objectives to be used in selecting a final remedy for a site shall be established in accordance with section 67500.15(e), which allows the use of screening levels as remedial objectives, if specified conditions are met. Screening levels shall be specified as follows:

(1) human health-based levels, established by the Department in accordance with the documents entitled ACalTox - A Multimedia Total Exposure Model for Hazardous-Waste Sites (dated December 1993 and incorporated by reference), the APreliminary Endangerment Assessment Guidance Document (dated January 1994 and incorporated by reference) and APredicting Blood Lead Concentrations from Environmental Concentrations (dated 1992 and incorporated by reference); or

(2) the soil screening levels established by the U.S. Environmental Protection Agency, in accordance with ASoil Screening Guidance: Technical Background Document (dated May 1996 and incorporated by reference) only for those chemicals not addressed in subsection (a)(1) of this section.

(b) The administering agency may make a determination of no further action, pursuant to paragraph (a), as provided by section 67500.30, if either one of the following apply:

(1) (A) the administering agency determines that the levels of contaminants in a given media do not exceed the screening levels and those screening levels are appropriate for the site. Such determination shall be based on information provided by the responsible party and deemed sufficient by the administering agency,

(B) exposure through pathways not considered in the development of the screening levels, including but not limited to secondary or indirect pathways, is not significant,

(C) the levels of contaminants in a given media do not result in ecological impacts, and

(D) the contaminants have not migrated and there is no threat of the contaminants migrating to groundwater; or

(2) the administering agency determines or approves a demonstration that the risk posed by the site does not pose a threat to human health and/or the environment. Such a determination shall be made using the APreliminary Endangerment Assessment Guidance Document (dated January 1994 and incorporated by reference). If a no further action determination is not made, remedial objectives to be used in selecting a final remedy for a site shall be established in accordance with section 67500.15(e).

(c) Any determination of no further action shall be consistent with all applicable regulations adopted by the State Water Resources Control Board, all applicable water quality control plans adopted pursuant to section 13170 of the Water Code and Article 3 (commencing with section 13240) of Chapter 4 of Division 7 of the Water Code, and all applicable state policies for water quality control adopted pursuant to Article 3 (commencing with section 13140) of Chapter 3 of

Division 7 of the Water Code, to the extent the administering agency determines that those regulations, plans, and policies are not less stringent than this chapter.

(d) If the levels of contaminants at a site exceed the screening levels provided in paragraph (a) of this section, as determined based on information deemed sufficient by the administering agency; or if the screening procedure applied in accordance with subsection (b)(2) of this section indicates the need for further action, the responsible party may, at any time in the corrective action process, propose an interim measure or final remedy for the site that encompasses the use of a presumptive remedy that when implemented will meet remedial objectives for the site as determined using one of the approaches set forth in section 67500.15(e). If the administering agency concurs with this proposal, the responsible party need not evaluate other remedies or prepare a remedy selection study and shall prepare a remedial action plan pursuant to section 67500.20.

NOTE: Authority cited: Sections 25150 and 58012, Health and Safety Code. Reference: Sections 25173.6, 25187, 25200.10, 25200.14, 58009 and 58010 of the Health and Safety Code.

Adopt new CCR Title 22 section 67500.15 to read:

67500.15. Remedy Selection and Remedial Objectives

(a) The administering agency may require the responsible party to develop and implement a remedy that meets the requirements of this section for all or part of a site any time the administering agency determines a release is likely to pose unacceptable risks to human health and the environment, including waters of the state. If the administering agency requires a remedy, the responsible party shall prepare workplans, reports and other documents necessary for the evaluation and selection of a remedy.

(1) Except as provided in subsection (a)(1)(A) of this section, the responsible party shall conduct an evaluation of potential remedies and prepare a remedy selection study, which shall identify and evaluate the remedies, including any innovative technologies where appropriate, that may be used to address the site. The remedy selection study shall be sufficient, as determined by the administering agency, to demonstrate that the provisions in paragraphs (b) and (c) of this section have been met.

(A) An evaluation of potential remedies is not required if a presumptive remedy can be applied.

(B) If the remedy selection study is complex because it encompasses two or more potential remedies, two or more constituents of concern, or two or more types of contaminated media, the administering agency may require the responsible party to submit a remedy selection study workplan that describes the methodology to be used in preparing the remedy selection study. The responsible party shall document the findings of the remedy selection study and any information used to make decisions regarding the remedy. This information shall be made available upon request by the administering agency. The administering agency may also require that the responsible party submit a remedy selection study report that documents the findings of the study. The remedy selection study workplan and report, if required, are subject to administering agency review and approval. If determined appropriate by the administering agency, given the complexity of the study, the responsible party may incorporate the findings of the remedy selection study into the RAP, prepared pursuant to section 67500.20, in lieu of submitting a remedy selection study report as a separate document.

(C) The administering agency may require the responsible party to perform treatability or pilot studies if such studies are needed to provide laboratory and/or field data needed to assess a remedy's potential effectiveness at a site. If treatability or pilot studies are required, a summary of the proposed treatability study including a conceptual design, and a schedule for conducting the tests, at a minimum shall be included in either the remedy selection study workplan or a treatability study workplan, if a remedy selection study workplan is not required. The treatability or pilot study may also be included as part of the site investigation.

(b) All remedies shall, at a minimum, meet the following standards:

(1) Be protective of human health and the environment;

(2) Attain the final remedial levels, as specified in subsection (e) of this section, unless the administering agency, or the responsible party, with the approval of the administering agency, determines that the final remedial objectives cannot be attained due to technical impracticabilities;

(3) Control the source(s) of releases so as to reduce or eliminate, to the extent practicable, further releases of hazardous wastes, hazardous constituents or hazardous substances that may pose a threat to human health and the environment;

- (4) Comply with all applicable state and federal laws and regulations;
- (5) Leave the site in a condition that allows it to be used for its reasonably anticipated future land use, free of significant risk to human health or potential for future significant environmental damage; and
- (6) Be consistent with all applicable regulations adopted by the State Water Resources Control Board, all applicable water quality control plans adopted pursuant to section 13170 of the Water Code and Article 3 (commencing with section 13240) of Chapter 4 of Division 7 of the Water Code, and all applicable state policies for water quality control adopted pursuant to Article 3 (commencing with section 13140) of Chapter 3 of Division 7 of the Water Code, to the extent the administering agency determines that those regulations, plans, and policies are not less stringent than this chapter.

(c) The remedy selection decision factors listed below shall be considered as balancing criteria when evaluating remedy alternatives and selecting a remedy. All potential remedies shall meet the standards listed in paragraph (b) of this section before the remedy selection decision factors are considered for further evaluation.

- (1) short-term effectiveness
- (2) reduction of toxicity, mobility and/or volume
- (3) long-term reliability and effectiveness
- (4) implementation feasibility
- (5) cost

(d) The responsible party shall develop preliminary remedial goals that proposed potential or selected remedies shall be expected to achieve.

(1) Preliminary remedial goals shall be established at background concentrations, screening levels set forth in section 67500.12, or based upon a health risk assessment. In all cases, if the release presents an ecological impact, the responsible party shall perform an ecological assessment to determine preliminary remedial goals.

(e) Final remedial levels are media-specific concentrations used to determine when a site has been adequately remediated. Final remedial levels shall be developed when the final remedy is selected pursuant to section 67500.20 and shall meet the following conditions. Preliminary remedial goals may be used as final remedial levels if the following conditions are met.

(1) A site-wide cumulative carcinogenic risk range of 10^{-4} to 10^{-6} and a site-wide cumulative systemic toxicity, including sensitive subgroups, health hazard index of <1 shall be used to determine remedial levels, unless lower concentrations are necessary to protect ecological receptors or meet applicable water quality objectives in applicable water quality control plans, as determined by a water quality assesement that evaluates whether constituents are migrating to waters of the state and meet state policies for water quality adopted pursuant to Article 3 (commencing with section 13140) of Chapter 3 of Division 7 of the Water Code. The 10^{-6} carcinogenic risk level shall be used as a point of departure in establishing remedial levels for known or suspected carcinogens.

(2) The responsible party shall, with the approval of the administering agency, select one or more of the following approaches for developing remedial levels:

(A) Background or non-detectable concentrations may be used as final remedial levels.

(B) Screening levels determined pursuant to section 67500.12(a) may be used as final remedial levels if the site includes, but is not limited to, all of the following site scenarios:

1. the administering agency, or the responsible party with the approval of the administering agency, has demonstrated, based on the applicable constituent(s), the media contaminated, the routes of exposure and the receptors, that the risk posed by the applicable constituent(s) is limited to human health risk; and

2. the applicable constituent(s) do not contaminate media or result in exposure pathways not considered in the development of the screening levels.

(C) A range of site-specific remedial levels based on a multi-media risk assessment approach, which may include a human health risk assessment and/or an ecological assessment, may be used to determine final remedial levels if the risk assessment meets the following requirements:

1. the risk assessment approach is approved by the Department;

2. employs pathways appropriate for the site. The pathways shall be approved by the administering agency and shall be based on the applicable constituent(s), the media contaminated, fate and transport through the environment, the routes of exposure and the receptors;

3. applies those site-specific value ranges that are available for the site; and

4. uses applicable default value ranges provided by the Department for any remaining parameters in the approach.

(D) Final site-specific remedial levels based on a multi-media risk assessment approach, which may include a human health risk assessment and/or an ecological assessment, may be used to determine final remedial levels if the following requirements are met:

1. the risk assessment approach is approved by the Department;

2. the risk assessment approach employs pathways appropriate for the site. The pathways shall be approved by the administering agency and shall be based on the applicable constituent(s), the media contaminated, fate and transport through the environment, the routes of exposure and the receptors; and

3. the risk assessment approach applies site-specific parameter values.

(3) Site-specific remedial levels developed pursuant to subsections (e)(2)(C) and (e)(2)(D) of this section may be used if the assessment(s) used to develop the levels address all applicable risks posed by the site.

(f) Land use conditions may be used in developing site-specific remedial levels pursuant to subsections (e)(2)(C) and (e)(2)(D) of this section, with the approval of the administering agency and with appropriate monitoring as provided in section 67500.35.

(g) If the administering agency determines or approves a demonstration that the risk posed by the release does not pose a threat to human health and/or the environment, or an impact or threatened impact to waters of the state, a no further action determination, as provided in section 67500.30, may be made.

NOTE: Authority cited: Sections 25150 and 58012, Health and Safety Code. Reference: Sections 25173.6, 25187, 25200.10, 25200.14, 58009 and 58010 of the Health and Safety Code.

Adopt new CCR Title 22 section 67500.20 to read:

67500.20. Remedial Action Plan.

- (a) A remedial action plan (RAP) shall specify the remedy and remedial objectives selected for a site. The responsible party shall prepare a RAP and submit it to the administering agency for approval.
- (b) The administering agency shall develop and maintain an administrative record, or add to an existing administrative record for the site, to support any decision made in accordance with this section.
- (c) The RAP shall include the following:
- (1) a brief description of the site, the nature and extent of contamination, any interim measures taken and a summary of any investigation performed, including site investigation findings, as provided in section 67500.11(d), if prepared;
 - (2) a listing of any alternative remedies considered and the reasons for rejecting the alternatives, including remedy selection study findings, as provided in section 67500.15(a), if prepared;
 - (3) the rationale for selecting the remedy, including a demonstration that the threshold criteria in section 67500.15(b) are met and the balancing criteria in section 67500.15(c) are considered; and
 - (4) final remedial levels determined in accordance with section 67500.15(e).
- (d) If implementation of the remedy would require a non-RCRA permit for treatment, storage or disposal of hazardous waste, the RAP may be used in lieu of a permit if:
- (1) the RAP complies with the provisions of paragraph (c) of this section; and
 - (2) the RAP includes the following:
 - (A) a description of management methods for the remedy, including any excavation, storage, handling, transportation, treatment and disposal of material on or off the site;
 - (B) a sampling and analysis plan to confirm the effectiveness of the remedy, if applicable, a description of methods to be employed to ensure the health and safety of workers and the public, and a description of security methods to be employed to prevent unauthorized or unintentional entry to the site;
 - (C) procedures to ensure compliance with the remedial action plan; and
 - (D) certification in accordance with section 66270.11(a) and (d) indicating that a duly authorized representative of the responsible party prepared the RAP,
 - (E) adequate information to demonstrate compliance with applicable standards in chapters 14, 15, 16, 18 and 20,
 - (F) procedures to ensure compliance with the remedial action plan,
 - (G) procedures for modifying the RAP, including adequate opportunity for public comment on any modification that would result in a significant change in the remedy at the site and review and approval of the modification by the administering agency, and
 - (H) an expiration date and the procedures by which the RAP may be terminated or revoked by the administering agency.

(e) If implementation of the remedy would require a RCRA permit for treatment, storage or disposal of hazardous waste, the Department may allow the RAP to be used in lieu of a RCRA permit if the RAP is prepared in compliance with regulations promulgated by U.S. EPA applicable to the use of a RAP in lieu of a RCRA permit.

(f) (1) The administering agency shall provide the public with an opportunity to review the proposed RAP for the site in accordance with section 67500.4.

(A) A response to comments received during the comment period shall be prepared by the administering agency at the time a final decision is issued. This response shall:

1. specify which provisions, if any, of the proposed decision have been changed in the final decision, and the reasons for the change, and

2. briefly describe and respond to all relevant comments on the proposed decision raised during the public comment period, or during any hearing or meeting.

(B) Any documents cited in the response to comments shall be included in the administrative record for the final decision. If new issues are raised or new information is provided during the public comment period, the administering agency may document its response to such comments by adding new material to the administrative record. The response to comments shall be made available to the public and included in the administrative record. If substantive new issues are raised or substantive new information is introduced during the comment period, the administering agency may reopen or extend the comment period.

(2) If a remedy is selected for a facility subject to the requirements of chapters 14 and 15 of this division, the Department shall follow the appropriate requirements for a permit modification contained in chapters 20 and 21 of this division.

(g) An approved remedial action plan shall:

(1) contain the items listed in paragraph (c) of this section;

(2) contain the items listed in paragraphs (d) or (e) of this section, if applicable;

(3) demonstrate that a RAP prepared in accordance with section 67500.11(c)(3) is sufficient to fulfill the standards specified in section 67500.11(b);

(4) demonstrate that a RAP prepared in accordance with section 67500.15(a)(1)(B) is sufficient to fulfill the demonstration specified in section 67500.15(a)(1).

(5) include responses to comments prepared in accordance with subsection (f)(1) of this section.

(h) Except as provided in subsection (d)(2)(H), the RAP shall not be reopened once it has been approved unless the administering agency determines the selected remedy does not meet, or no longer meets, the requirements of section 67500.15(b).

NOTE: Authority cited: Sections 25150 and 58012, Health and Safety Code. Reference: Sections 25173.6, 25187, 25200.10, 25200.14, 58009 and 58010 of the Health and Safety Code.

Adopt new CCR Title 22 section 67500.24 to read:

67500.24. Remedy Design and Implementation

(a) The responsible party shall prepare workplans, reports or other documents necessary for remedy implementation. Such workplans, reports and other documents are subject to the approval of the administering agency.

(b) The remedy design shall facilitate the design, construction, operation, maintenance and monitoring of a remedy at the site. If determined necessary by the administering agency, given the nature and scope of the remedy, the responsible party may be required to submit any or all of the following documents:

- (1) Health and Safety Plan
- (2) Transportation Plan
- (3) Operation and Maintenance Plan
- (4) Draft Plans and Specifications
- (5) Final Plans and Specifications
- (6) Work Progress Reports
- (7) Construction Workplan
- (8) Construction Completion Report
- (9) Confirmation Sampling Plan
- (10) Remedy Evaluation Plans and Reports
- (11) Remedy Completion Report
- (12) Monitoring Plan and Reports
- (13) Identification of Permits
- (14) Detailed Implementation Schedule

NOTE: Authority cited: Sections 25150 and 58012, Health and Safety Code. Reference: Sections 25173.6, 25187, 25200.10, 25200.14, 58009 and 58010 of the Health and Safety Code.

Adopt new CCR Title 22 section 67500.25 to read:

67500.25. Interim Measures.

(a) Interim measures shall be implemented whenever necessary at any stage of the corrective action process. The administering agency shall determine which interim measures, if any, the responsible party shall implement at the site. The administering agency shall develop and maintain an administrative record, or add to an existing administrative record for the site, to support any determination made in accordance with this section.

(b) When interim measures are required, the responsible party shall submit an interim measures assessment, which shall include both a description of previously implemented interim measures and an evaluation of other interim measures that should be implemented at the site, including identification of the source and nature of the release and evaluation of the threat to public health and the environment. The assessment shall also identify any new data needed for making decisions on interim measures. The assessment may be required by the administering agency as a stand-alone document or as a part of other corrective action documents (e.g., current conditions report or site investigation workplan).

(c) The administering agency may require the responsible party to submit workplans, reports or other documents determined by the administering agency to be necessary for implementing interim measures.

(d) If at any time the responsible party identifies an immediate or potential threat to human health or the environment, discovers new releases of hazardous waste, hazardous constituents or hazardous substances, or discovers a solid waste management unit not previously identified, the responsible party shall notify the Project Manager of the administering agency orally within 48 hours of discovery. The responsible party shall notify the administering agency in writing within 15 days of discovery summarizing the findings, including the immediacy and magnitude of the potential threat to human health or the environment. A report made to the Department pursuant to section 66264.56(j) may be used to fulfill this notification requirement if it summarizes the immediacy and magnitude of the potential threat to human health or the environment. The administering agency shall assess this information and may require the implementation of interim measures.

(e) If the administering agency identifies an immediate or potential threat to human health or the environment, discovers new releases of hazardous waste, hazardous constituents or hazardous substances, or discovers a solid waste management unit not previously identified, the administering agency shall notify the responsible party in writing and may require the implementation of interim measures.

(f) If interim measures are required, the responsible party shall submit a workplan to the administering agency for approval. If the administering agency determines that immediate action is required, the administering agency's Project Manager may orally authorize the responsible party to implement interim measures necessary to address the emergency prior to the submission of the workplan.

(1) All workplans shall ensure that the interim measures are designed to mitigate current or potential threats to human health or the environment, and shall, to the extent practicable, be consistent with the objectives of, and contribute to the performance of, any final remedy that may be required at the site. Interim measures may become part of the final remedy.

(2) The administering agency shall evaluate the interim measures workplan and shall require that the responsible party perform public participation activities as described in section 67500.4.

(A) Following a comment period the administering agency shall prepare and distribute responses to comments received during the public comment period, revise the interim measures, if necessary, and notify the public of any significant changes in the interim measures, if determined necessary after considering the scope and complexity of the revised interim measure and the level of community interest. Responses to comments shall be included in the administrative record.

(3) If interim measures are implemented on an emergency basis, public participation activities shall be implemented and shall include a public notice at a minimum. Required public participation activities may be implemented after the emergency situation has been addressed, as directed by the administering agency and as required by section 67500.4.

(g) The responsible party may voluntarily implement interim measures, if the administering agency determines that such voluntary interim measures are not likely to be inconsistent with the final remedy and will not cause additional risk to public health and the environment. Such voluntary implementation of interim measures shall be undertaken in accordance with the requirements of all applicable local, state and federal laws and regulations. The responsible party shall notify the administering agency in writing at least 30 days prior to voluntarily implementing interim measures. The written notification shall describe the voluntary interim measures and include a work schedule. The administering agency may require modification to the proposed voluntary interim measures or interim measures, in addition to, or in lieu of, any interim measures voluntarily taken or proposed by the responsible party. The administering agency may require the responsible party to conduct public participation activities for any proposed voluntary interim measures.

NOTE: Authority cited: Sections 25150 and 58012, Health and Safety Code. Reference: Sections 25173.6, 25187, 25200.10, 25200.14, 58009 and 58010 of the Health and Safety Code.

Adopt new CCR Title 22 section 67500.29 to read:

67500.29. Financial Assurance.

(a) As directed by the administering agency, the responsible party shall establish and maintain a financial assurance mechanism for remedy implementation, operation, maintenance and monitoring, if implementation of the remedy, is scheduled to take more than one year; completion of the remedy is scheduled to take more than five years; or if long-term maintenance or monitoring of a selected remedy is required. Implementation of the remedy includes, but is not limited to, activities such as remedy construction. Completion of the remedy includes, but is not limited to, completion of the remedy operation. Remedies that would require long-term maintenance or monitoring include, but are not limited to, pumping and treating contaminated groundwater and maintaining a cap over contaminated media.

(b) Financial assurance mechanisms that may be used to fulfill the requirement of paragraph (a) of this section include a trust fund; a surety bond guaranteeing payment into a trust fund; a surety bond guaranteeing performance of remedy implementation, operation, maintenance and monitoring; a letter of credit; insurance; a financial test and guarantee; or an alternative financial mechanism approved by the administering agency. For the purposes of this chapter, the responsible party shall establish a financial assurance mechanism, if required, in a manner consistent with the provisions in section 66264.143, and the administering agency shall review and approve the mechanism.

(c) The responsible party shall provide financial assurance, if needed, for remedy implementation, operation, maintenance and monitoring beyond property boundaries as required by 67500.2(b).

NOTE: Authority cited: Sections 25150 and 58012, Health and Safety Code. Reference: Sections 25173.6, 25187, 25200.10, 25200.14, 58009 and 58010 of the Health and Safety Code.

Adopt new CCR Title 22 section 67500.30 to read:

67500.30. Determination of No Further Action.

(a) To request and support the cessation of remedies, the operation and maintenance of the remedy, monitoring, or other corrective action activities, the responsible party shall submit a remedy completion report to the administering agency. The remedy completion report shall demonstrate one of the following and shall include data to substantiate the request, including operation and maintenance data, monitoring data, and work accomplishments:

(1) the final remedial objectives specified by the administering agency in the Remedial Action Plan have been met;

(2) hazardous waste, hazardous constituent or hazardous substance concentrations do not exceed background or screening levels, pursuant to section 67500.12(a);

(3) the screening approach, implemented in accordance with section 67500.12(b)(2), demonstrates that the risk posed by the site does not pose a threat to human health or the environment; or

(4) the administering agency determines or approves a demonstration that the risk posed by the release does not pose a threat to human health or the environment in accordance with section 67500.15(g).

(b) The administering agency shall review the remedy completion report and select one of the following actions:

(1) approve a determination of no further action following completion of the public participation process in paragraph (d) of this section,

(2) propose that a determination of partial remedy completion be approved, but withhold a determination of no further action until ongoing operation and maintenance is determined to be complete,

(3) request further information from the responsible party, or

(4) disapprove the request and require continued implementation of the remedy.

(c) The administering agency shall develop and maintain an administrative record, or add to an existing administrative record for the site, to support any determination made in accordance with this section.

(d) (1) The administering agency shall require that the responsible party perform public participation activities specified in section 67500.4.

(A) If a no further action determination is made in accordance with subsection (a)(1) of this section, a public notice without a public comment period may apply.

(B) If a no further action determination is made in accordance with subsections (a)(2), (a)(3) or (a)(4) of this section, public participation activities shall include a public notice and comment period. The administering agency shall incorporate responses to relevant comments received in the final determination.

(2) If a determination of no further action is being proposed for a facility subject to the requirements of chapters 14 and 15 of this division, the Department shall follow the appropriate requirements for a permit modification contained in chapters 20 and 21 of this division.

(e) Any determination of no further action shall be consistent with all applicable regulations adopted by the State Water Resources Control Board, all applicable water quality control plans

adopted pursuant to section 13170 of the Water Code and Article 3 (commencing with section 13240) of Chapter 4 of Division 7 of the Water Code, and all applicable state policies for water quality control adopted pursuant to Article 3 (commencing with section 13140) of Chapter 3 of Division 7 of the Water Code, to the extent the administering agency determines that those regulations, plans, and policies are not less stringent than this chapter.

NOTE: Authority cited: Sections 25150 and 58012, Health and Safety Code. Reference: Sections 25173.6, 25187, 25200.10, 25200.14, 58009 and 58010 of the Health and Safety Code.

Adopt new CCR Title 22 section 67500.35 to read:

67500.35. Land Use Conditions.

(a) Land use conditions shall be recorded to ensure the objectives of the remedy specified in the remedial action plan or interim measure continue to be met and permanently maintained, unless the remedies or interim measures are appropriate for unrestricted land use.

(b) The administering agency shall notify the local land use planning authority in which any site is located that a remedy has been proposed pursuant to this chapter. The administering agency shall provide the local land use planning authority with notice of the time, date, and place of all public meetings regarding the remedy and shall involve the local land use planning authority in any deliberation concerning land use conditions or actions. The administering agency shall request the local land use planning authority to provide the administering agency with the local land use planning authority=s assessment of the planned use of the site, including the current and future zoning and general plan designations for the site and the local land use planning authority=s determination as to the appropriate planned use designation in the remedial action plan prepared for the site.

(c) Unless the remedy, when fully implemented, will place the site in a condition that allows it to be used without restriction, a remedial action plan shall require the execution and recording of land use conditions. All land use conditions shall be agreed to and executed by the owner of the land and shall run with the land. All executed land use conditions shall be recorded by the site owner in the county in which the site is located within ten days of execution. The site owner shall provide the administering agency with a copy of the land use conditions, which have been appropriately recorded.

(1) The terms and conditions of a land use condition may be modified only with the express written consent of the administering agency, based on a determination that the remedy implemented at the site provides sufficient protection of human health and the environment, and is sufficient to permit the reasonably anticipated planned use of the site. If additional remedies are required to provide that protection, the administering agency shall not approve the request for modification of the conditions until completion of the additional remedies. Implementation of a modification to a land use condition shall be in accordance with the following procedure:

(A) The person requesting the modification to the planned use of the site shall provide the request in writing to the administering agency to approve a modification to an existing land use condition. The request shall be accompanied by supporting documentation demonstrating that the remedy implemented at the site provides the required protection.

(B) After evaluating the request, the administering agency shall do one of the following:

1. Approve the proposed modification;
2. Approve the proposed modification with conditions, which may include implementation of additional remedies; or
3. Disapprove the proposed modification and provide the responsible party with the reasons for the disapproval.

(C) 1. Within 30 days from the date that any decision to approve a request for modification becomes final, the site owner shall record the modified land use conditions in the county in which the site is located and provide the administering agency with a copy of the

appropriately recorded land use conditions. The approved modification shall take effect upon recordation and after notice of the final decision is given in writing, by appropriate means, to immediately adjacent property owners, persons who attended a public meeting or who provided comments or who requested this notice.

2. If the approval is accompanied by conditions that require compliance prior to modification of the land use conditions, the site owner shall provide the administering agency with a copy of the land use conditions, which has been appropriately recorded within 30 days after the administering agency has notified the site owner that compliance with those conditions has been demonstrated. The approved modification shall take effect upon recordation.

NOTE: Authority cited: Sections 25150 and 58012, Health and Safety Code. Reference: Sections 25173.6, 25187, 25200.10, 25200.14, 58009 and 58010 of the Health and Safety Code.